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DEPARTMENT FOR EUR/SE

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [TU](#)

SUBJECT: GOT ABOLISHES STATE SECURITY COURTS

REF: ANKARA 2425

Classified by Polcouns John Kunstadter; reasons 1.4 b and d.

[11.](#) (C) Summary: Parliament passed legislation June 17 closing the State Security Courts (SSCs), special courts designed to try "crimes against the State." The courts had been widely criticized, including by the EU, for pro-prosecution bias. A number of human rights attorneys argue that the legislation amounts to a mere name change, because new courts will be created that will have special powers similar to those of the SSCs. However, an MP closely involved with the issue maintains that the new courts will be less authoritarian than the SSCs and closer to regular penal courts. A number of GOT contacts claim that past reforms had already limited the powers of the SSCs, and say that by closing the SSCs the GOT is removing a label associated with Turkey's past. While closing the SSCs may help burnish Turkey's image in the run-up to the December EU Summit, it does not address the fundamental flaws of the Turkish judicial system. End Summary.

Controversial Courts Closed

[12.](#) (U) The legislation adopted by Parliament revokes the law governing the SSCs, established by constitutional mandate after the 1980 military coup to prosecute "crimes against the State," and transfers the SSC caseload to the Heavy Penal Court system. Parliament in May revoked the constitutional article requiring the State to establish the SSCs (reftel). SSCs have been used to prosecute a wide array of criminal acts, ranging from violent terrorist attacks to speech deemed insulting to the State or its institutions. SSCs have handled Turkey's most sensitive and high-profile trials, including those involving captured PKK leader Abdullah Ocalan and Kurdish separatist and former MP Leyla Zana. The courts have long been criticized by human rights activists and outside observers, including the EU, for a pro-prosecution bias. The European Court of Human Rights has frequently overturned SSC convictions on the grounds that the defendants were denied the right to a fair trial.

Attorneys Argue Law is Mere Name Change...

[13.](#) (C) Under the new law, the SSC caseload will be shifted to the Heavy Penal Court system, where new courts will be created specializing in various crimes against the State, such as terrorism, separatism, and treason. Several attorneys associated with the human rights community averred to us that the legislation is not a genuine reform, but a sham that preserves the SSC system under a new label. They argue that the law designates special powers for the new penal courts that will re-create the pro-prosecution bias of the SSCs. Senal Sarihan, an attorney active in a number of human rights and women's groups, pointed out that the law gives the chief judge broad authority to remove a defense attorney or his client from the courtroom for "disturbing the order of the court," an authority she claims is unconstitutional. The law also authorizes the courts to ban press coverage or public statements that "disturb the order and discipline of the court." In cases with 200 or more defendants, the courts can bar some defendants from attending some hearings on the grounds that their presence is not required. Yusuf Alatas, attorney and Human Rights Association vice president, said such special powers send a message to judges and prosecutors that these courts are special bodies designed to protect the State, and therefore do not need to respect the right to a defense. "When you make special arrangements like this, judges and prosecutors start believing they are above their peers in other courts, and they behave differently," Alatas said.

...But MP Says Improvements Made

[14.](#) (U) However, Halil Ozyolcu, acting chairman of the parliamentary Justice Committee, averred to us that the

legislation marks a significant improvement in the judicial system. While the initial draft of the bill would have transferred the SSCs' powers nearly intact to newly created "organized crime" courts, the Committee made important revisions to the legislation after pundits and human rights activists raised objections. As a result, Ozyolcu said, the law brings about the following changes:

-- SSCs placed a 30-day limit on the time allotted for attorneys to prepare a defense; the new courts will determine a "reasonable time period" on a case-by-case basis;

-- The bonus pay that had been provided exclusively to SSC judges and prosecutors has been eliminated from the judicial system;

-- SSC judges were authorized to approve arrest warrants filed by SSC prosecutors; now all prosecutors must go to separate, civil courts to have arrest warrants approved;

-- SSCs were funded by special provision directly from the Justice Ministry; now all courts will be funded through the regular judiciary budget.

15. (U) In addition, SSC judges and prosecutors will be reassigned to other courts throughout the system, breaking up teams that had, in some cases, developed an "authoritarian mentality," Ozyolcu said.

GOT Officials: SSCs Had "Bad Reputation"

16. (U) A number of GOT contacts concede that the legislation is essentially a name change, but argue that past reforms had already rendered the SSCs virtually identical to the Heavy Penal Courts. By abolishing the SSCs, they maintain, the GOT is removing a label associated with Turkey's past. "The (SSCs) had a bad reputation, so we've closed them to call attention to the reforms," said Asligul Ugdul, political affairs director at the GOT's EU Secretariat General. Recent reforms of the SSC system include removing military judges from SSC panels and reducing the maximum pre-trial detention period in SSC cases.

Authoritarian Laws Remain Intact

17. (C) Sedat Aslantas, attorney and Human Rights Association secretary general, averred to us that genuine judicial reform

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would require major revisions to some of the draconian laws designed to protect the "sacred State." Under the authoritarian language of the Turkish Penal Code and Anti-Terrorism Law, prosecutors have wide latitude to charge people with crimes against the State for written or spoken comments considered critical of government or State officials, or sympathetic to terrorist organizations. A large portion of SSC defendants have been charged with non-violent expression; many, for example, have stood accused of separatist acts for using the term "sayin" (esteemed) in reference to Ocalan. The use of the Kurdish language, regardless of the content, has led to numerous SSC prosecutions. In addition, a number of legal articles, including Article 5 of the Anti-Terror Law, mandate longer sentences for crimes against the State. As a consequence, many defendants convicted for controversial speech do more time in jail than violent criminals. Unfortunately, Aslantas said, closing the SSCs will not address these problems.

Comment

18. (C) The judiciary, like many Turkish institutions, is plagued by a deeply rooted flaw that fuels all other problems: it is designed to protect the State from the individual, not the other way around. A true reorientation would require a broad overhaul of Turkish law and the emergence of a new generation of judges and prosecutors with a different mentality. The GOT could not bring about such radical change before the December EU Summit, even if it wanted to. It is engaged in an all-out effort to rack up reform triumphs in time for inclusion in the EU Commission Regular Report, due September 29. This legislation will likely earn a brief, positive reference in that report, but will have minimal impact on the quality of justice in Turkish courtrooms.

